

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #4	CCRB Case #: 201906402	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/10/2019 5:13 PM	Location of Incident: In front of 210 West 31st Street	Precinct: 14	18 Mo. SOL 10/10/2020	EO SOL 5/27/2021	
Date/Time CV Reported Tue, 07/09/2019 11:51 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/22/2019 1:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Louis Depergola	01249	954724	MTS PCT
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Juan German	16549	957620	MTS PCT
2. POM Ian Wallace	21563	955648	MTS PCT
3. POF Samantha Villalba	23069	958151	MTS PCT
4. POF Michelle Murray	15530	956903	MTS PCT
5. POM Christophe Diblasi	12299	964488	MTS PCT
6. POM Michael Dipalma	17361	960465	MTS PCT
7. POM John Secaira	30456	951229	MTS PCT
8. POM Scott Schlenker	22071	959970	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Louis Depergola	Force: Sergeant Louis Depergola used physical force against § 87(2)(b)	
B.SGT Louis Depergola	Force: Sergeant Louis Depergola used pepper spray against § 87(2)(b)	
C.SGT Louis Depergola	Abuse: Sergeant Louis Depergola threatened § 87(2)(b) with the use of force.	
D.SGT Louis Depergola	Discourtesy: Sergeant Louis Depergola spoke discourteously to § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	

Case Summary

On July 9, 2019, § 87(2)(b) filed this complaint with IAB, generating original log # 19-26592. The CCRB received the log on July 22, 2019.

On April 10, 2019, at approximately 5:13 p.m., Police Officer Juan German of the 14th Precinct stopped the vehicle in which § 87(2)(b) and her boyfriend, § 87(2)(b) were occupants in front of 210 West 31st Street in Manhattan for making an improper turn. PO German asked § 87(2)(b) for her identification. § 87(2)(b) refused to provide it and requested to speak with a supervisor. Sergeant Louis Depergola, Police Officer Ian Wallace, Police Officer Samantha Villalba, Police Officer Michelle Murray, and Police Officer Christophe DiBlasi (all assigned to the 14th Precinct) responded to the location. Sgt. Depergola attempted to pull § 87(2)(b) from her vehicle (**Allegation A: Force**, § 87(2)(g) Sgt. Depergola pepper sprayed § 87(2)(b) (**Allegation B: Force**, § 87(2)(g) and Sgt. Depergola told § 87(2)(b) he would “tase” her (**Allegation C: Abuse of Authority**, § 87(2)(g) Sgt. Depergola also told § 87(2)(b) to “get out of the fucking car” (**Allegation D: Discourtesy**, § 87(2)(g) Officers forcibly removed § 87(2)(b) from the vehicle as well (**Allegation E: Force**, § 87(2)(g) Once § 87(2)(b) was removed from the vehicle, she was taken to the ground and handcuffed. EMS arrived and transported § 87(2)(b) to § 87(2)(b)

§ 87(2)(b) was arrested for § 87(2)(b) (Board Review 01). § 87(2)(b) was arrested for § 87(2)(b) (Board Review 19).

The investigation obtained the body-worn camera (BWC) footage of the incident. PO German’s BWC captured his initial interaction with § 87(2)(b) and § 87(2)(b) on the ground (Board Review 02). Sgt. Depergola and PO Villalba’s BWC’s captured the allegations pertaining to Sgt. Depergola (Board Review 03) (Board Review 04). There is no video evidence of the force used against § 87(2)(b)

Findings and Recommendations

Allegation (A) Force: Sergeant Louis Depergola used physical force against § 87(2)(b)

Allegation (B) Force: Sergeant Louis Depergola used pepper spray against § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Louis Depergola threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b) made an improper turn and was pulled over as a result. It is undisputed that § 87(2)(b) refused to provide her identification to PO German. § 87(2)(b) requested to speak with a supervisor. Sgt. Depergola responded to the scene.

§ 87(2)(b) (Board Review 05) testified that Sgt. Depergola approached her window and she asked if he was the supervisor. Sgt. Depergola confirmed that he was. § 87(2)(b) extended her arm to shake his hand and Sgt. Depergola leaned away. Sgt. Depergola then reached into her vehicle through the window and unlocked the door. § 87(2)(b) informed the officers that she was going to roll up her window and “push started” the vehicle. Sgt. Depergola opened the door and reached in to pull § 87(2)(b) from the vehicle. § 87(2)(b) held onto her steering wheel for several seconds. Sgt. Depergola extended one of his arms over § 87(2)(b)’s forearms and grabbed her hands. Simultaneously, Sgt. Depergola pepper sprayed § 87(2)(b) with his free hand. § 87(2)(b) let go of the steering wheel. Sgt. Depergola and other officers pulled her out of the vehicle. After she was removed from the vehicle, § 87(2)(b) stood next to her car and put her hands behind her back to be handcuffed.

PO German’s BWC (Board Review 02), between 01:10 and 01:25, shows PO German ask for § 87(2)(b)’s driver’s license twice and she tells him she will not give it to him. PO German informs § 87(2)(b) that she made an improper turn. § 87(2)(b) acknowledges that she committed the infraction. PO German asks for her license again. § 87(2)(b) refuses to provide it and requests a

supervisor. From 16:20 to 16:35, Sgt. Depergola approaches PO German after pepper spraying § 87(2)(b) and removing her from the vehicle and says, “I know I lost my temper back there but she had...” The rest of Sgt. Depergola’s statement is unclear. PO German appears to signal to Sgt. Depergola that his camera is on and Sgt. Depergola responds, “That’s fine...but I told her to give me her license and registration...” PO German interjects, “Whose camera is this?” Sgt. Depergola responds, “That’s mine.”

Sgt. Depergola’s BWC captured his initial interaction with § 87(2)(b) as well as the allegations above, excluding his use of the pepper spray (Board Review 03). From 01:24 to 01:35, Sgt. Depergola arrives at the location, walks to § 87(2)(b)’s vehicle, and orders her to produce her license and registration. § 87(2)(b) extends her hand to shake Sgt. Depergola’s and he tells her he is not shaking her hand. § 87(2)(b) says that everybody is being rude to her and that she is going to roll up her window. It is unclear whether she turns her car on. Sgt. Depergola simultaneously reaches into her car, opens the door, and tells his officers to “get her out of the car.” From 01:48 to 01:55, officers pull § 87(2)(b)’s left arm out of the car. § 87(2)(b) holds onto the steering wheel with her right hand. Her eyes are closed and tears are running down her face. Sgt. Depergola tells § 87(2)(b) that “I [he] will tase you [her] as well” as she wipes her closed eyes with her free hand.

PO Villalba’s BWC captured Sgt. Depergola deploying the pepper spray into § 87(2)(b)’s face (Board Review 04). From the beginning of the recording to 00:22 seconds, Sgt. Depergola speaks with § 87(2)(b) at the driver’s seat for approximately 10 seconds. He then reaches into the car, pulls § 87(2)(b) and then deploys his pepper spray into § 87(2)(b)’s face.

Sgt. Depergola’s statement (Board Review 06 and 07) was consistent with the abovementioned BWC recordings, with the following exceptions and additional information. § 87(2)(b) refused to provide her identification, stated that she was going to roll up her window, and turned on the car ignition. Sgt. Depergola opened her car door because he was concerned that § 87(2)(b) would attempt to flee. § 87(2)(b) tensed her body and held onto the steering wheel. Sgt. Depergola, PO DiBlasi, and PO Villalba reached into the vehicle and attempted to pull § 87(2)(b) out. Approximately 10 seconds later, Sgt. Depergola deployed his pepper spray into § 87(2)(b)’s face. Sgt. Depergola did not warn § 87(2)(b) that she would be pepper sprayed. Sgt. Depergola pepper sprayed § 87(2)(b) because he thought it was a “less lethal force option” to control her, he felt she was strong, and he did not want to get hurt. Sgt. Depergola explained that, in general, he prefers to use pepper spray because it is better than deploying hand strikes when a civilian is noncompliant. § 87(2)(b) loosened her grip on the steering wheel after being pepper sprayed. Sgt. Depergola then informed § 87(2)(b) that he would tase her because § 87(2)(b) remained in her vehicle after being pepper sprayed. Sgt. Depergola and the other officers eventually removed § 87(2)(b) from the vehicle and took her to the ground. § 87(2)(b) was handcuffed, and EMS was called.

In his TRI Report (#§ 87(2)(b)), Sgt. Depergola noted his use of pepper spray, and forcibly taking § 87(2)(b) down and handcuffing her, which is consistent with his testimony (Board Review 08).

NYPD Patrol Guide, Procedure 221-02 defines active aggression as the threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent (Board Review 09).

NYPD Patrol Guide, Procedure 221-01 states that when appropriate with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. The reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force. The Department examines the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation (Board Review 10).

NYPD Patrol Guide, Procedure 221-07 states that Use of Oleoresin Capsicum Pepper Spray (“OC spray”) may be used to gain or maintain control of persons who are actively resisting arrest or

lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. In an effort to gain voluntary compliance, members of the service should advise the offender that O.C. pepper spray will be used before applying such force, if feasible. Do not use O.C. pepper spray on subjects who passively resist. Avoid using O.C. pepper spray in small contained areas such as automobiles and closets (Board Review 11).

NYPD Patrol Guide 221-08 states that a Conducted Electrical Weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) present. The use of a CEW is classified as a significant intermediate use of force option such as O.C. Spray or impact techniques (Board Review 12).

It is undisputed that § 87(2)(b) started her vehicle during her initial interaction with Sgt. Depergola. § 87(2)(g)

It is undisputed that § 87(2)(b) exhibited active aggression towards PO German and Sgt. Depergola. It is undisputed that Sgt. Depergola approached § 87(2)(b)'s vehicle and instructed § 87(2)(b) to produce her license and registration. It is undisputed that § 87(2)(b) refused to comply with his instruction and started her vehicle, creating a hazardous condition. § 87(2)(g)

Sgt. Depergola stated that he threatened to tase § 87(2)(b) because she continued to resist after being pepper sprayed. Sgt. Depergola's BWC shows that, at the time the statement was made, § 87(2)(b) was sitting in her car, crying with her eyes were closed and wiping her face while officers pulled on her arm. § 87(2)(g)

Allegation (D) Discourtesy: Sergeant Louis Depergola spoke discourteously to § 87(2)(b)

Sgt. Depergola's BWC, from 01:48 to 01:55, captures officers pulling § 87(2)(b)'s arms out of the car. Simultaneously, Sgt. Depergola tells § 87(2)(b) to "get out of the fucking car," twice.

Neither § 87(2)(b) nor § 87(2)(b) mentioned this allegation.

Sgt. Depergola acknowledged making this statement and stated that he did so because it "was in the heat of the moment."

DAO-DCT Case Command:550/Case Number: 2013-10143 states that while officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful law enforcement situations (Board Review 13).

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

Allegation (E) Force: Officers used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was removed from § 87(2)(b)'s vehicle.

§ 87(2)(b) provided a phone statement to the investigation and mentioned that he was also removed from § 87(2)(b)'s vehicle (Board Review 14). The investigation was unable to obtain a verified statement from § 87(2)(b) despite numerous contact attempts (Board Review 15).

PO German's BWC (Board Review 02), at 12:55, shows § 87(2)(b) on the ground next to § 87(2)(b)'s vehicle and officers standing around him. It is unclear why he was removed from the vehicle, how he was removed, and which officers participated in this action.

§ 87(2)(g)

Civilian and Officer Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 16).
- PO German has been a member-of-service for five years and has been the subject in three CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Depergola has been a member-of-service for six years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- As of February 7, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (Board Review 18).

Squad No.: _____

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader:

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date